

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE A.K.BASHEER**

**WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929**

**WP(C).No. 4258 of 2004(F)**  
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**PETITIONER:**  
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**THE BOARD OF DIRECTORS OF THE  
KADAKKAL SERVICE CO-OPERATIVE BANK LIMITED  
NO.3656, KADAKKAL POST, KOLLAM DISTRICT,  
REPRESENTED BY ITS PRESIDENT.**

**BY ADV. SRI.M.K.DAMODARAN (SR.)  
SRI.P.K.VIJAYAMOHANAN**

**RESPONDENTS:**  
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- 1. THE STATE OF KERALA,  
REPRESENTED BY THE SECRETARY TO GOVERNMENT,  
CO-OPERATION DEPARTMENT, TRIVANDRUM.**
  - 2. THE JOINT REGISTRAR OF CO-OPERATIVE  
SOCIETIES (GENERAL), CIVIL STATION, KOLLAM.**
  - 3. SMT.D.V.RAJAMBIKA,  
JUNIOR CLERK, KADAKKAL SERVICE CO-OPERATIVE  
BANK LTD., KADAKKAL P.O., KOLLAM DISTRICT.**
- R3 BY ADV. SRI.S.GOPAKUMARAN NAIR  
SRI.M.S.VIJAYACHANDRAN BABU  
GOVERNMENT PLEADER SMT. LAKSHMI RANI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 28/03/2007, THE COURT ON 26/09/2007 DELIVERED THE  
FOLLOWING:**

WP(C) NO: 4258/2004 F

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE CHARGE MEMO DT. 26/11/99 TO THE R3.

EXT.P2. COPY OF THE ENQUIRY REPORT ON THE DOMESTIC ENQUIRY DT. 1/8/01.

EXT.P3. COPY OF THE APPEAL DT. 17/11/01 BY THE R3.

EXT.P4. COPY OF THE DECISION OF THE APPEAL COMMITTEEDT. 22/4/02.

EXT.P5. COPY OF THE PETITION DT. 22/5/02 OF THE R3 BEFORE THE R2.

EXT.P6. COPY OF THE OBJECTION OF THE PETITIONER DT. 27/6/02 TO EXT.P5.

EXT.P7. COPY OF THE CRP NO. 11/3113/2001 DT. 16/8/01 OF THE R2.

EXT.P8. COPY OF THE REVISION PETITION DT. 12/11/2002 OF THE BANK BEFORE THE GOVT.

EXT.P9. COPY OF THE GO RT NO. 560/03/CO-OP DTD. 6/10/2003 OF THE R1.

EXT.P10. COPY OF THE MINUTES OF THE DISCIPLINARY SUB COMMITTEE' DT. 5/11/2001.

EXT.P11. COPY OF THE MINUTES OF THE APPEAL COMMITTEE DT. 25/3/02.

RESPONDENT'S EXHIBITS /ANENXURES

ANNEXURE -I: COPY OF THE ORDER DT. 6/11/2001.

*True copy*

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**Dated this the 26<sup>th</sup> day of September, 2007.**

**J U D G M E N T**

This writ petition is at the instance of the Managing Committee of a primary Co-operative Bank governed by the Co-operative Societies Act 1969 and the Rules framed thereunder. Petitioner prays for issue of a writ of certiorari to quash Exts.P7 and P9 orders issued by the Joint Registrar of Co-operative Societies and the Government respectively. By the impugned orders, the decision of the Bank to revert respondent No.3 from the post of Head Clerk as juniormost junior Clerk pursuant to a disciplinary proceeding has been revoked by the two authorities mentioned above, holding that the punishment imposed on respondent No.3 was in violation of sub-rules (1) and (4) of Rule 198 of the Rules 1969.

2. Since the issue falls in a very narrow compass, it is not necessary to refer to the contentions raised by the parties at great length. It is not in dispute that respondent No.3 who was working as Head Clerk in the Bank was placed under suspension pending enquiry on the allegation that she had committed misappropriation of the Bank funds and was also guilty of manipulation in the books of account such as Chitty register, Gold loan register etc. It is admitted by the petitioner that the Managing Committee had resolved to place the delinquent (respondent No.3) under suspension pending enquiry on the face of the materials which had come to light

on verification of the records. Accordingly the President as authorised by the Managing Committee had issued orders placing respondent No.3 under suspension and a show cause notice was issued to her. The explanation submitted by respondent No.3 was not found to be satisfactory. Therefore the Managing Committee resolved to initiate disciplinary proceedings against respondent No.3 and to appoint an Advocate of Kollam Bar as the Enquiry Officer. Thereafter the Managing Committee had appointed a Sub Committee to proceed with the disciplinary proceedings.

3. The Sub Committee had issued Ext.P1 memo of charges to respondent No.3 directing to show cause why appropriate action shall not be taken against her. Since the reply submitted by the delinquent was not found to be satisfactory Sri. K.Siju, Advocate, Kollam was appointed as the Enquiry Officer. Ext.P2 is the report submitted by the Enquiry Officer. Four witnesses were examined on the side of the management and one witness on the side of the delinquent. Exts.M1 to M28 were marked on the side of the management and Exts.D1 to D2 (A) were marked on the side of the delinquent. Exts.E1 to E35 were also marked in the case.

4. The Enquiry Officer found that the delinquent had “committed series of irregularities in the financial accounts” affecting the trust of

the customer in the Bank. The Sub Committee accepted the report of the Enquiry Officer and imposed a punishment of reversion from the post of Head Clerk to that of juniormost Junior Clerk. The above decision of the Sub Committee was challenged by the delinquent before the Managing Committee in an appeal as provided under Rule 198 (4) of the Rules. The Managing Committee dismissed the appeal and confirmed the decision of the Sub Committee.

5. The above order of the Managing Committee was challenged by the delinquent before the Joint Registrar invoking the power under Rule 176 of the Rules. The Joint Registrar took the view that the Managing Committee had “acted intentionally” against the provisions contained in Rule 198 of the Rules and therefore the order of reversion passed against respondent No.3 was unsustainable. Accordingly the decision of the Sub Committee as confirmed by the Appeal Committee was rescinded. The Managing Committee was directed to place the delinquent in the post of Head Clerk and to give her all the benefits attached to the above post. A copy of the order passed by the Joint Registrar is on record as Ext.P7. Though the Managing Committee challenged the above order of the Joint Registrar before the Government, it did not meet with any success. The Government affirmed the decision of the Joint Registrar. Ext.P9 is the copy of the

order issued by the Government. The above two orders are under challenge in this Writ Petition.

6. It is contended by the petitioner that the Joint Registrar as well as the Government had failed to advert to the crux of the issue in its proper perspective. The Managing Committee had constituted a Sub Committee to deal with the disciplinary proceedings. The Sub Committee had issued memo of charges to the delinquent and had heard her explanation. It was thereafter that the Enquiry Officer had completed the enquiry and found that the delinquent was guilty of the charges levelled against her. The Disciplinary Committee had thereafter considered the report of the officer and imposed the punishment. Thus the rules of natural justice had been meticulously followed and complied with. The delinquent was afforded sufficient opportunity to be heard at all stages. The Appeal Committee which heard the appeal did not consist of the members of the disciplinary sub committee. Therefore the contention of the delinquent that the Appeal Committee was incompetent to hear the appeal ought to have been repelled by the Joint Registrar and the Government. It is also pointed out by the petitioner that there was no violation of Rule 198(1) while imposing the penalty of reduction of rank of the delinquent.

7. Per contra it is contended by respondent No.3 that the two

authorities while issuing Exts.P7 and P9 orders had meticulously examined the relevant provisions contained in the Rules and taken the correct decision. Respondent No.3 stoutly supports the two orders which are impugned in the writ petition.

8. It may be true that the Managing Committee had initially resolved to place the delinquent under suspension pending enquiry on the face of the allegations made against her. That does not mean that the Managing Committee had by such decision concluded that the delinquent was guilty of the charges which were yet to be framed. It is not disputed before me that the Managing Committee had constituted a Sub Committee to proceed further in the matter. Accordingly the Sub Committee had issued show cause notice and the petitioner was also heard. Thereafter memo of charges was served on the petitioner. It may yet again be true that the Managing Committee had resolved to appoint a legal practitioner to the Enquiry Officer to conduct the domestic enquiry. This also does not mean that the action of the Managing Committee was, in any way, tainted. Respondent No.3 does not have a case that she was denied an opportunity at any stage in the course of the disciplinary proceedings. Large number of documents were produced and a witness was also examined on her side. The witnesses from the side of the management were also cross examined

by her. Of course, the delinquent had a grievance that she was denied the opportunity to engage a legal practitioner to defend her before the Enquiry Officer. But the said request was turned down by the Officer, since the management had not been given such a privilege. In short, the delinquent did not have any complaint that she was denied of any opportunity to defend herself properly before the Enquiry Officer. The disciplinary Sub Committee had imposed the punishment after complying with the necessary formalities. It is also on record that the appeal preferred by the delinquent was heard by the Managing Committee excluding the members who constituted the disciplinary sub committee. In that view of the matter, it cannot be held that the appeal Committee which heard the appeal was in any way incompetent.

9. The other contention raised by the delinquent before the Joint Registrar was that she could not have been reverted to the post of juniormost Junior Clerk from the post of Head Clerk. Rule 198(1) of the Rules stipulates that any member of the establishment of a Co-operative Society may, for good and sufficient reasons, be punished by imposing any of the penalties, which include “reduction to a lower rank”. The reasoning of the Joint Registrar and the Government appears to be that “reduction to a lower rank” would only mean the immediate lower rank from the post which is being held by the

delinquent. I am unable to agree. So long as the Rule does not postulate that reduction should be to the next lower rank, the Joint Registrar and the Government were not justified in taking the view that respondent No.3 could have been reverted to the next lower post.

Having carefully examined the materials on record, and having considered the contentions raised by the petitioner and the respondents, I am satisfied that the petitioner is entitled to succeed. Therefore Exts.P7 and P9 orders are quashed. Writ Petition is allowed.

**A.K. Basheer**  
**Judge.**

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